HEALTH AND SENIOR SERVICES DIVISION OF HEALTH CARE SYSTEMS ANALYSIS

Certificate of Need: Application and Review Process

Changes in Licensed Beds and/or Services

Proposed Amendment: N.J.A.C. 8:33-3.4

Authorized by: Clifton R. Lacy, M.D., Commissioner, Department of

Health and Senior Services (with approval of the

Health Care Administration Board)

Authority: N.J.S.A. 26:2H-1 et seq.

Calendar Reference: Please see Summary below for Statement of

exception to the rulemaking calendar

requirements.

Proposal Number: PRN 2003-392

Submit written comments by December 5, 2003 to:

John A. Calabria, Director

Certificate of Need and Acute Care Licensure Program New Jersey Department of Health and Senior Services

P.O. Box 360, Room 403

Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The Department of Health and Senior Services is proposing to amend requirements concerning the certificate of need process for relocation of existing services/beds at N.J.A.C. 8:33-3.4(a). In the 2002 readoption with amendments of N.J.A.C. 8:33, the Department expanded the geographic area within which a relocation of a health care service subject to certificate of need could be approved under an expedited review process, with applications initiated by the applicants rather than in response to a call. The intent of this change was to increase the flexibility available to health care facilities to respond to changes in the larger health care environment, while preserving the intent of the certificate of need process to ensure access to and quality of care.

The current rule permitting expedited review of relocations in a planning region limits such relocations to services for which there is a bed complement, and, in the case of transfers of the services to other facilities in the region, requires the receiving facility to already hold a license for the specific service in

question. These limitations preclude the Department from even considering certain service relocations, even if the relocation would result in enhanced quality and/or access, as well as a more rational use of health care resources. Upon further discussion and deliberation, the Department believes that it would be appropriate to increase the flexibility available to health care facilities seeking to relocate services.

Accordingly, the Department is now proposing further amendments that would expand the ability of nursing homes and general hospitals to file, and the Department to entertain, applications under both the full and expedited review processes for a certificate of need for relocation of these services within a planning area. It is noted that allowing the Department to entertain such provider-initiated applications is not tantamount to approval of the relocation. All applications for relocations of beds and services must satisfy all of the criteria specified in N.J.A.C. 8:33-3.4(a).

Briefly summarized, the Department's proposed amendments are as follows:

N.J.A.C. 8:33-3.4(a)3 is amended to delete language that prohibits relocations within the same planning region of services that do not have an associated bed complement. The remaining language permits relocation of an entire service or bed complement, or a portion of a service or bed complement, under the full or expedited review process depending on the type of beds/services proposed for relocation.

N.J.A.C. 8:33-3.4(a)3ii is amended to eliminate language permitting the Commissioner to waive bed relocation requirements when the relocation was proposed to the sights of a general hospital proposed or approved for closure in the preceding 12 months. Language is added to require, in the case of services that may only be offered in a general hospital, that the receiving facility already be licensed as a general hospital, while in the case of services that may only be offered in a nursing home, the receiving facility shall already be licensed as a nursing home, assisted living residence or comprehensive personal care home.

A new N.J.A.C. 8:33-3.4(a)3ii(1) is added which permits a general hospital to relocate through the full review process all or part of a licensed bed complement or an entire service to another general hospital not currently licensed for that bed or service category. A new N.J.A.C. 8:33-3.4(a)3ii(2) is added which permits the relocation through expedited review of licensed long term care beds to an existing assisted living residence or comprehensive care home. Such relocation is permitted with a ratio of one long term care bed for every three licensed assisted living residence or comprehensive personal care home beds to a maximum of sixty long term care beds.

A new N.J.A.C. 8:33-3.4(a)3iii is added to clarify that, in the case of services that do not have a licensed bed complement, the service must be relocated in its entirety and may not be split between sending and receiving facilities.

A new N.J.A.C. 8:33-3.4(a)3ix is added to emphasize that a general hospital may not through relocation eliminate any service that is a mandatory general hospital service.

A new N.J.A.C. 8:33-3.4(a)3xi is added which prohibits the subsequent relocation of any bed or service complement currently approved for relocation for a period of three years from the original relocation approval date. The only exception is in the case where the proposed subsequent relocation is back to the original site of the bed or service complement.

Current N.J.A.C. 8:33-3.4(a)3iii through vii are recodified to reflect these new subparagraphs.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Department anticipates no negative impact on consumers of health care services, since the rule proposed for amendment continues to require that certificate of need applications pertaining to relocations of health care services must meet stringent application requirements designed to assure continued access to quality health care services, particularly for minority and medically underserved populations. The use of the full review process for proposed relocations from one general hospital to another not currently licensed for the beds/services proposed for relocation will permit formal public comment on a proposal that could significantly impact a particular community. Finally, the relocation of long term care beds to an assisted living residence or a comprehensive personal care home will enhance the aging in place concept already embodied by these facility types. Residents who require long term care services will no longer have to be moved to an offsite entity if their health status requires services provided in licensed long term care beds.

Economic Impact

The Department anticipates that these amendments will have a positive economic impact on the general hospital and nursing home industries as a whole, in that it will permit the Department to entertain applications for relocation of health care services that may result in more efficient use of health care resources, while preserving access to and quality of care. The Department does

not anticipate that there will be any economic impact upon consumers or the general public.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost in the State of New Jersey as a result of these proposed amendments.

Federal Standards Statement

Since there is currently no Federal regulation or statute governing certificate of need, a Federal standards analysis is not required in conjunction with the proposed amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

As they pertain to hospitals, the proposed amendments will not affect small businesses as they are defined in the Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq. New Jersey general hospitals, all of which are governed by N.J.A.C. 8:43G, employ well over 100 people full-time and, thus, are not defined as small businesses under the Act. However, some long term care facilities may qualify as small businesses under the Act. Applicants will incur the administrative costs for providing the application information and must pay the specified fees. Facilities may, but are not required to, employ outside professionals, at varying fees, to assist them in the application process. As the requirement for a facility to obtain a certificate of need arises under statute, and is intended to foster the public health, no lesser requirements or exemptions can be provided for small businesses. However, the increased regulatory flexibility provided by the amendments themselves will result in more timely consideration of applications, thus reducing delays and costs in project implementation. Accordingly, no further regulatory flexibility analysis is required.

Smart Growth Impact

The proposed amendments shall not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

<u>Full text</u> of the proposal follows (additions indicated in boldface <u>thus</u>, deletions indicated in brackets [thus]):

- 8:33-3.4 Changes in licensed beds and/or services
 - (a) The following criteria apply to changes in licensed beds and/or services:
 - 1.-2. (No change)
- 3. [For services for which there is no specific licensed bed complement, relocation is not permitted, unless the service is otherwise exempt from the certificate of need requirement in accordance with those rules. For services for which there is a specific licensed bed complement, the] The relocation of a portion of a [facility's] general hospital's or long term care facility's licensed beds or the entire licensed service from one licensed [facility] general hospital (sending facility) to another licensed general hospital (receiving facility) or from a licensed long term care facility (sending facility) to a licensed long term care facility, assisted living residence, or comprehensive personal care home (receiving facility) located within the same planning region requires a certificate of need [and]. Except as noted in (a)3ii(1) below for general hospitals, these certificate of need applications shall follow the expedited review process, unless the beds or service at issue are otherwise exempt from the certificate of need requirement in accordance with these rules. The application shall be considered pursuant to the following criteria:
 - i. (No change)
- ii. The receiving facility shall already hold a license for the <u>specific</u> category of <u>service or</u> beds proposed for relocation, <u>except in the case of services that may only be offered in a general hospital or nursing home. In the case of services that may only be offered in a general hospital, the receiving facility shall already hold a license as a general hospital. In the case of services that may only be offered in a nursing home, the receiving facility shall already hold a license as a nursing home, assisted living residence, or comprehensive personal care home. [The Commissioner may, in the case of proposed bed relocations, waive this requirement when the receiving facility is the site of a general hospital proposed or approved for closure in the previous 12 months, if the Commissioner makes a finding that such approval will not reduce the quality of care associated with the beds];</u>
- (1) An application which proposes the relocation of a portion of an existing general hospital's bed complement or an entire bed or service array which remains subject to certificate of need to another general hospital not currently licensed for that bed or service array shall follow the full review process but shall not be subject to a published review schedule and may be submitted on the first business day of any month.
- (2) In the case of an application which proposes the relocation of licensed long term care beds to an assisted living residence or a

comprehensive personal care home, the receiving facility shall receive long term care beds in the ratio of one long term care bed for every three licensed assisted living residence and/or comprehensive personal care home beds to a maximum of 60 long term care beds.

<u>iii.</u> For any service for which there is no specific licensed bed complement, the entire service must be relocated and shall not be split between the sending and receiving facilities;

Recodify existing iii-vi as iv-vii. (No change in text.)

- [vii.] <u>viii</u>. All minimum and maximum bed/unit size requirements (for example, six bed pediatric units, 10 bed obstetrics units, 240 bed long-term care facilities) shall be maintained at both the sending and receiving facilities; [and]
- ix. A general hospital may not through relocation eliminate any service that is a mandatory service in accordance with N.J.A.C. 8:43G-2.12;
- [ix.] <u>x.</u> The relocation shall not violate a condition of a prior certificate of need approved for the establishment of the beds or services, unless the applicant presents evidence of substantial changes since imposition of the condition and the Commissioner makes a finding that the evidence warrants removal or modification of the condition[.] <u>: and</u>
- xi. Any bed complement or service approved for relocation shall not be subsequently approved for another relocation for a period of three years from the original relocation approval date. The only exception shall be where the Department shall consider a relocation certificate of need application back to the original site.
 - 4. (No change)